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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,626	10/12/2000	James A. Satchell JR.	TPP31333	6147

7590 06/28/2006

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EXAMINER

GARLAND, STEVEN R

ART UNIT PAPER NUMBER

2125

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/686,626	SACHELL ET AL.	
	Examiner	Art Unit	
	Steven R. Garland	2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 31-41, 60-127 and 129-134 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 31-41, 60-127, 129-134 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-12,31-41,60-127, and 129-134 are pending.
2. Applicant's comments in regards to the examiner not supplying copies of documents mentioned in paragraphs 17 and 18 of the previous office action requires clarification, the correct paragraphs were 7 (not 17) and 18 in the previous office action, and were in regards to copies of documents in an abandoned parent application of the instant application. Note 37 CFR 1.19 gives details of the fees for the office providing copies of such an application and office policy does not permit the examiner to provide free copies of an abandoned application.
3. Claims 114-127,129 and 130 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35

U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

The Pannu court stated that the Clement test for determining the presence of recapture or lack thereof as a three step analysis:

Application of the recapture rule is a three step process. The first step is to “determine whether and in what ‘aspect’ the reissue claims are broader than the patent claims.” ... “The second step is to determine whether the broader aspects of the reissued claim related to surrendered subject matter.” ... “Finally, the court must determine whether the reissued claims were materially narrowed in other aspects to avoid the recapture rule. Pannu 59 USPQ2d at 1600.

As to the first step, claims 114-127, 129, and 130 are all method claims which are all broader than the apparatus claims 1-12 of the patent, since they do not specify a particular vending machine structure as in the patent claims. In the following explanation claim 114 is used as an example and a similar analysis can be made for the other rejected claims.

In the following explanation claim 114 is used as an example and a similar analysis can be made for the other rejected claims.

As to the second step, Claim 1, as originally filed in the patent application, was to

“a vending machine for sale of items selected by a customer comprising:
a storage unit for storing a plurality of items for sale and a dispensing mechanism for dispensing the items from the storage unit;

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a selector device for selecting one or more of said items for sale by the customer;

a payment-control device for receiving and detecting an amount of payment required for the sale of an item and for actuating said dispensing mechanism when a payment is received to dispense a selected item; and

a computer assembly connected to said storage and dispensing unit, selector device and payment control device and having a computer, video display screen and a modem, whereby said computer is connected to and actuated by said selector device for automatically connecting said computer to a pre-selected internet site and automatically displaying information obtained from said internet site on said video screen for viewing by the customer said computer assembly further including customer actuating means for enabling a customer to interface with said computer."

Claims 1-9 were rejected under 35 U.S.C. 103 in the office action 10/6/97.

In response to the rejection claim 1 was amended to recite a vending machine having a door for retrofitting an existing vending machine consistent with allowable claim 10 in the amendment of 12/30/97.

Claims as broad or broader than the scope of original claim 1 are then surrendered subject matter and can not be recaptured.

As to the final step, for example new reissue claim 114 is directed to " A method of providing a customer with access to the Internet via a vending machine, said method comprising

1.) providing a vending machine to vend at least one physical item selected by a customer for purchase;

2.) said purchase of said at least one item permits the customer to be operatively connectable via the Internet to websites;

3.) allowing access to the websites by said customer, said access comprising at least one of inserting money or credit card information into the vending machine and customer input of data to the computer. “

New method claim 114 is clearly broader in scope than the surrendered subject matter of original claim 1, since specific details of the vending machine are not given such as whether a modem is used. Further reissue claim 114 entirely omits the retrofitting door limitation that was added to overcome the art rejection. The claim also adds limitations that are not related to the previously surrendered subject matter in the form of limitations of a purchase allows the customer to be operatively connected to the Internet. Such claims are barred by the recapture rule. See *In re Clement*, 131 F.3d at 1470, 45 USPQ2d at 1165 (Fed. Cir. 1997).

The retrofitting door aspects “surrender generating limitations” have been omitted from these claims resulting in improper recapture. The retrofitting door was indicated as being the reason for allowance of originally numbered claim 10 in the parent patent in the office action of 10/6/97. Further in the amendment filed 12/30/97 by the applicant it was stated that claim 1, the only other independent claim in the application, was being amended to recite a vending machine having a door for retrofitting an existing vending machine consistent with allowable claim 10. The

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response further stated that in view of the indication of Allowability of claim 10, these amendments are submitted to place claim 1 in condition for allowance with all the other remaining claims being dependent on claim 1 as amended. The application was then allowed without additional amendment and no additional comments in regards to the allowed claims were made by the applicants. All the rejected claims fail to claim the retrofitting door.

In response to applicant's arguments, originally filed claims 1-9 in the patent were amended to avoid an art rejection by adding the retrofitting door aspects. Applicant can not now broaden the claims to recapture subject matter broader than that previously surrendered in original claims 1-9 of the parent patent application. See *In re Clement*, 131 F.3d at 1470, 45 USPQ2d at 1165 (Fed. Cir. 1997).

Further applicant is not prevented from presenting broaden reissue method claims. Applicant appears to imply that the position held by the examiner requires that no broadening of a patent claim would ever be allowed. The examiner's position is that recapture places a limit on the amount broadening of any reissue claims whether apparatus or method, since claims lacking the surrender generating limitation are barred by recapture. The rejected claims all fail to recite the retrofitting door limitations "surrender generating limitations" and are rejected under recapture.

IN REGARDS TO THE DECLARATION BY MR. SATCHELL

4. The declaration by Mr. Satchell submitted 3/2/06 by Mr. Satchell under 37 CFR 1.131 has been considered but is ineffective to overcome the Sokal, Brown, and Small references.

5. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Sokal, Brown, and Small references to either a constructive reduction to practice or an actual reduction to practice.

In regards paragraphs 4 and 5 of the declaration relating to the statements about paragraph 8 of the Satchell declaration filed 8/20/04 and resubmitted 10/22/04, Exhibit A of these declarations, provides a variety of dates making it difficult to discern what period of time various events occurred and how they support conception and/or diligence. For example page 1 of the Exhibit A (submission to Coca Cola signed by Mr. Satchell) is dated 9/18/05 but makes no mention of any "Internet" features and neither do the drawing on page 4 or description on page 5 of Exhibit A. However page 6 (labeled corrected copy) does mention Internet connections but the date is uncertain (two dates 5/26/95 and 8/17/95 but no clear indication when the "correction" was made). Further paragraph 8 of the previous declaration (8/20/04, 10/22/04) clearly indicates that Exhibit A is a composite of a submission to Coca Cola and additional material, it does not state that all this material was actually submitted to Coca Cola.

In regards to paragraphs 6- 8, as pointed out previously the physical file for abandoned parent application 08/429583 must be consulted to determine various dates since dates appear on both the front and back of various documents in the application. The Image File Wrapper referred to in the Robins declaration is for the child 09/686,626 application and not for the 08/429583 application, since the parent 08/429583 application has not been scanned. In paragraph 7, applicant urges that the document was submitted by fax on 11/8/95, the examiner is unable to determine how applicant

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arrived at this conclusion. The original documents in the application file 08/429583 appear to be part of the documents received by mail on 12/26/95 not a fax received on 11/8/95.

In regards to paragraph 9 of the declaration, the copies are acknowledged as being the best applicant is able to provide. The meaning in Exhibit E, which is an attachment to the declaration filed on 8/20/04 and resubmitted 10/22/04, regarding the last 5 handwritten lines do not appear to have been addressed by applicant in the declaration. Specifically what is the continued act to the drawings (what drawings?, since no drawings are in the exhibit) and what was stamped by the USPTO ?

6. In view of the declarations submitted 10/22/04 and 3/2/06 by Mr. Satchell and upon reconsideration the supplemental declaration by Dora Stroud appears to show Mr. Satchell conceived the use of a vending machine as a doorway for the public to reach websites, but fails to establish conception of the invention in that the means themselves and their interaction must be comprehended also.

7. In response to applicant's arguments, the original claim and drawings in the 08/429,583 application lacked any mention of Internet features. Note for example the office action mailed 3/19/96, paragraph 5, makes no mention of any Internet features as well as the claim and "drawings prints as originally filed". Even the faxed claim copy of 8/17/95 makes no mention of the Internet. Note is also taken that in the office action of 3/19/96, that the claim of the 08/429583 application was rejected under 35 U.S.C. 112 first paragraph as follows:

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"Applicant has failed to disclose how the various listed parts operate together to perform the desired result. For example, how does the data control unit, VCR player, satellite receiver, laser-disc player, camera system, cassette dispenser, selection panel, digital counter, satellite antenna, speakers, video screen, and motion detector interrelate or cooperate to perform the desired functions. No block diagrams or wiring of the apparatus connecting these various elements has been disclosed. " Similar reasoning in regards to the Internet features in combination with the vending applies, as explained above. Further neither Section 2(2) or 7(B) of the original specification in the 08/429,583 application mentions www or Internet access.

8. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Sokal reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

9. The Satchell declaration of 8/20/04,10/22/04 in paragraphs 6-7 appears to show that the internet with worldwide web concept was just emerging and that it proposed the use of a vending machine as a doorway for the public to reach websites, but fails to establish that the necessary means and their interactions to accomplish the desired results were known. Paragraph 7 specifically acknowledges that the concept of the internet was just emerging and paragraph 13 also appears to show that the necessary

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means and their interaction were not yet known. Paragraphs 21 and 24 of the declaration also provide evidence that the interaction between the various means to accomplish the intended functions were not known.

10. The Satchell declaration of 8/20/04, 10/22/04 in paragraph 8 it is not clear as to what applicant means by additional drawing/written description, or when the additional material was added and to what it was added to. Note for example the "corrected copy" page 6 in Exhibit A for example.

11. The declaration by Mr. Satchell is insufficient to establish diligence for the period prior to the filing date of the Sokal, Brown, Small, and Hill, III references to the constructive reduction to practice by the filing of the 08/715232 application.

12. As a particular example diligence has not been shown for the period from just prior to the filing date of 10/10/95 of the Sokal reference to the March 19, 1996 rejection in the 08/429583 application, after the rejection of March 19, 1996 it appears applicant was diligent in filing the 08/715232 application which was the constructive reduction to practice and contained Internet features as originally filed. The entire time period from just prior to the filing date of 10/10/95 of the Sokal reference to the March 19, 1996 rejection must be accounted for by either affirmative acts or acceptable excuses to overcome the Sokal reference. See MPEP 2138.06. For example the time period such as November 14-16, etc. have not been accounted for. The work relied upon must be directed to attaining a reduction to practice of the subject matter of the counts. It is not sufficient that the activity relied on concerns related subject matter. *Gunn vs. Bosch* 181 USPQ 292.

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13. Remarks: one of the critical dates applicant's appear to be trying to swear behind is the filing date of the Sokal reference, while Hurricane Opal could certainly be an acceptable excuse for various delays. Factual evidence to support diligence prior to such a critical date, such as the filing date of Sokal, is still required even if conception has been shown. The examiner can not speculate whether any delay is a result of inexcusable inactivity on the part of the applicants or for excusable inactivity. To illustrate this point, this might be somewhat over simplified in, the statement that Hurricane Opal arriving on 10/5/95 does not automatically provide a showing of diligence by applicant from 10/5/95 prior to the critical date of 10/10/05 of the Sokal reference absent factual proof.

14. The amendment filed 12/26/95 in parent application 08/429,583 is not either an actual reduction to practice or a constructive reduction to practice as in the case of filing an U.S. patent application. The filing of the U.S. 08/715,232 application is the constructive reduction to practice . Note MPEP sections 715-715.07(c) and 37 CFR 1.131(b).

Note is also taken that in the papers submitted 12/26/95 in the 08/429,583 application that the cover sheet specifically refers to "modifications, amendments, and supplements containing additional subject matter" these papers introduce the term Internet and also introduce new matter which is not supported by the original 08/429,583 application as filed. New matter is prohibited under 35 U.S.C. 132 and 37 CFR1.131 (b). Also note In re Costello 219 USPQ 389 which deals with conception..

Further in regards to the amendment filed 12/26/95 in the 08/429,583 application, the only places the internet/ world wide web are mentioned are in paragraphs 2(2) and 3 on page 3; paragraph 5(B) and 7(B) on page 4; paragraph 14 on page 5a; page 6; and element (5B) on page 2 of the drawings also submitted on 12/26/95. These parts of the amendment fail to establish a reduction to practice prior to the Sokal 5,953,504, Brown 5,445,295, Small 5,513,117, and Hill et al. 5,646,819 effective filing dates all of which are prior to the 12/26/95 date.

15. Applicant's arguments in regards to conception have been noted but are not persuasive. Declarations filed under 37 CFR 1.131 provide various ways to establish prior invention and are set forth in MPEP section 715.07. Among them conception prior to the effective date of the reference, along with due diligence from prior to the reference date, to either an actual reduction to practice or to the filing date of the application (constructive reduction to practice). Conception by itself, is not a complete invention, and confers no rights to an inventor. Further applicant's comments in regards to interference practice have been noted, a declaration filed under 37 CFR 1.131 only has similarities to interference practice and the examiner recognizes this fact and never intentionally suggested that they were the same. Also note MPEP sections 2138.04-2138.06 which also explain conception, diligence, and reduction to practice.

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

17. Claims 31-41, 60-64, 66, 68, 69, 71-108, 110-112, 127, and 129-134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt et al. 4,839,505 in view of Sokal et al. 5,953,504.

Bradt et al. teaches a vending machine with a hinged door having a computer, modem, display, credit card reader, and bill or coin acceptor mounted on the door. Bradt also teaches that the computer can send and receive information from a remote site such as the owner or by linking to a credit card company. Bradt further teaches that the dispensed items can be video tapes, music disks, or other items, dispensing the items through the door, storing the items in the machine, use of a keypad, and advertising when the machine is available. See the abstract; figures; col. 1, lines 9-13; col. 2, lines 26-42; col. 7, line 29 to col. 8, line 31; col. 9, lines 27-60; col. 10, lines 19-45; col. 12, lines 3-18, col. 13, line 66 to col. 13, line 68; col. 18, lines 30-58; col. 19, lines 49-55; col. 24, lines 55-60; col. 33, lines 52-65; and also note fig. 2.

Bradt however does not specifically teach Internet access using a vending machine.

Sokal et al. teaches allowing public access to the Internet, use of a computer, payment means, use of removable memory means, display, key pad, camera, microphone, speaker, modem, attracting customers, server, display of a home page which requires the use of a browser, downloading information, sending receiving audio/video information, CD-ROM reading/mastering, display time to browse, connecting to a business web site. See the abstract; figures; col. 1, line 6 to col. 2, line 25; col. 3, line 8 to col. 5, line 23; col. 6, line 26 to col. 7, line 12; and the claims.

It would have been obvious to one of ordinary skill in the art to modify Bradt in view of Sokal and modify the vending machine and its door to allow the Internet access functions taught by Sokal. This would allow a wider range of transactions and increase the revenue from the machine.

Bradt and Sokal however do not expressly state the audio/video is uploaded/downloaded to the recording device or that money is dispensed. Sokal does teach reading and mastering a CD-ROM.

It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to allow downloading/uploading audio/visual information so that information could be easily shared or saved as a permanent record.

Further it would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to dispense money in the form of returning change for a purchase if for no other reason than to prevent vandalism to the machine.

Further Bradt as explained above teaches various door features including dispensing an item, while Sokal is relied on for teaching Internet access including purchasing Internet access time through a vending machine. Bradt already allows uploading/downloading to various databases (col. 13, lines 47-68) and it would have been obvious to one of ordinary skill in the art to modify Bradt in view of Sokal to also vend Internet access for increased sales. The additional revenue generated by the more diverse functions of Bradt/Sokal could be attained at a marginal increased cost to the owner/operator since most if not all the necessary hardware would already be present in the machine door of Bradt.

In response to applicant's arguments, the declarations by Mr. Satchell and Mr. Asumadu are ineffective to remove the Sokal reference for the reasons given above.

18. Claims 65 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt et al. 4,839,505 in view of Sokal et al. 5,953,504 as applied to claims 31-41, 60-64, 66, 68, 69, 71-108, 110-112, 127, and 129-134 above, and further in view of Brown 5,445,295.

Bradt et al. teaches a vending machine with a hinged door having a computer, modem, display, credit card reader, and bill or coin acceptor mounted on the door. Bradt also teaches that the computer can send and receive information from a remote site such as the owner or by linking to a credit card company. Bradt further teaches that the dispensed items can be video tapes, music disks, or other items, dispensing the items through the door, storing the items in the machine, use of a keypad, and advertising when the machine is available. See the abstract; figures; col. 1, lines 9-13;

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col. 2, lines 26-42; col. 7, line 29 to col. 8, line 31; col. 9, lines 27-60; col. 10, lines 19-45; col. 12, lines 3-18, col. 13, line 66 to col. 13, line 68; col. 18, lines 30-58; col. 19, lines 49-55; col. 24, lines 55-60; col. 33, lines 52-65; and also note fig. 2.

Bradt however does not specifically teach Internet access using a vending machine.

Sokal et al. teaches allowing public access to the Internet, use of a computer, payment means, use of removable memory means, display, key pad, camera, microphone, speaker, modem, attracting customers, server, display of a home page which requires the use of a browser, downloading information, sending receiving audio/video information, CD-ROM reading/mastering, display time to browse or price information, connecting to a business web site or other sites. See the abstract; figures; col. 1, line 6 to col. 2, line 25; col. 3, line 8 to col. 5, line 23; col. 6, line 26 to col. 7, line 12; and the claims.

It would have been obvious to one of ordinary skill in the art to modify Bradt in view of Sokal and modify the vending machine and its door to allow the Internet access functions taught by Sokal. This would allow a wider range of transactions and increase the revenue from the machine.

Bradt and Sokal however do not expressly state the audio/video is uploaded/downloaded to the recording device or that money is dispensed. Sokal does teach reading and mastering a CD-ROM.

It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to allow downloading/uploading audio/visual information to the CD-ROM or floppy disc so that information could be easily shared or saved as a permanent record.

Further it would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to dispense money in the form of returning change for a purchase if for no other reason than to prevent vandalism to the machine.

Bradt and Sokal however do not teach the use of plural speakers or headphones. Sokal does teach the use of a speaker.

Brown teaches the alternatives of headphones or speakers in a vending machine. See col. 5, lines 1-5.

It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal in view of Brown and provide the device with plural speakers for improved sound or headphones for private listening and to reduce background noise.

19. Claims 67 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt et al. 4,839,505 in view of Sokal et al. 5,953,504 as applied to claims 31-41, 60-64, 66, 68, 69, 71-108, 110-112, 127, and 129-134 above, and further in view of Small 5,513,117.

Bradt et al. teaches a vending machine with a hinged door having a computer, modem, display, credit card reader, and bill or coin acceptor mounted on the door. Bradt also teaches that the computer can send and receive information from a remote site such as the owner or by linking to a credit card company. Bradt further teaches that the dispensed items can be video tapes, music disks, or other items, dispensing the

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items through the door, storing the items in the machine, use of a keypad, and advertising when the machine is available. See the abstract; figures; col. 1, lines 9-13; col. 2, lines 26-42; col. 7, line 29 to col. 8, line 31; col. 9, lines 27-60; col. 10, lines 19-45; col. 12, lines 3-18, col. 13, line 66 to col. 13, line 68; col. 18, lines 30-58; col. 19, lines 49-55; col. 24, lines 55-60; col. 33, lines 52-65; and also note fig. 2.

Bradt however does not specifically teach Internet access using a vending machine.

Sokal et al. teaches allowing public access to the Internet, use of a computer, payment means, use of removable memory means, display, key pad, camera, microphone, speaker, modem, attracting customers, server, display of a home page which requires the use of a browser, downloading information, sending receiving audio/video information, CD-ROM reading/mastering, display time to browse or price information, connecting to a business web site or other sites. See the abstract; figures; col. 1, line 6 to col. 2, line 25; col. 3, line 8 to col. 5, line 23; col. 6, line 26 to col. 7, line 12; and the claims.

It would have been obvious to one of ordinary skill in the art to modify Bradt in view of Sokal and modify the vending machine and its door to allow the Internet access functions taught by Sokal. This would allow a wider range of transactions and increase the revenue from the machine.

Bradt and Sokal however do not expressly state the audio/video is uploaded/downloaded to the recording device or that money is dispensed. Sokal does teach reading and mastering a CD-ROM.

It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to allow downloading/uploading audio/visual information to the CD-ROM or floppy disc so that information could be easily shared or saved as a permanent record.

Further it would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to dispense money in the form of returning change for a purchase if for no other reason than to prevent vandalism to the machine.

Bradt and Sokal however do not teach the use of a mouse or trackball.

Small teaches the alternatives of a mouse or trackball for data input into a vending machine. See col. 6, lines 60-65.

It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal in view of Small and allow for data entry using a mouse for ease in selecting items.

20. Claim 109 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt et al. 4,839,505 in view of Sokal et al. 5,953,504 as applied to claims 31-41, 60-64, 66, 68, 69, 71-108, 110-112, 127, and 129-134 above, and further in view of Brandes et al. 5,090,589.

Bradt et al. teaches a vending machine with a hinged door having a computer, modem, display, credit card reader, and bill or coin acceptor mounted on the door. Bradt also teaches that the computer can send and receive information from a remote site such as the owner or by linking to a credit card company. Bradt further teaches that the dispensed items can be video tapes, music disks, or other items, dispensing the items through the door, storing the items in the machine, use of a keypad, and

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advertising when the machine is available. See the abstract; figures; col. 1, lines 9-13; col. 2, lines 26-42; col. 7, line 29 to col. 8, line 31; col. 9, lines 27-60; col. 10, lines 19-45; col. 12, lines 3-18, col. 13, line 66 to col. 13, line 68; col. 18, lines 30-58; col. 19, lines 49-55; col. 24, lines 55-60; col. 33, lines 52-65; and also note fig. 2.

Bradt however does not specifically teach Internet access using a vending machine.

Sokal et al. teaches allowing public access to the Internet, use of a computer, payment means, use of removable memory means, display, key pad, camera, microphone, speaker, modem, attracting customers, server, display of a home page which requires the use of a browser, downloading information, sending receiving audio/video information, CD-ROM reading/mastering, display time to browse or price information, connecting to a business web site or other site. See the abstract; figures; col. 1, line 6 to col. 2, line 25; col. 3, line 8 to col. 5, line 23; col. 6, line 26 to col. 7, line 12; and the claims.

It would have been obvious to one of ordinary skill in the art to modify Bradt in view of Sokal and modify the vending machine and its door to allow the Internet access functions taught by Sokal. This would allow a wider range of transactions and increase the revenue from the machine.

Bradt and Sokal however do not expressly state the audio/video is uploaded/downloaded to the recording device or that money is dispensed. Sokal does teach reading and mastering a CD-ROM.

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It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to allow downloading/uploading audio/visual information to the CD-ROM or floppy disc so that information could be easily shared or saved as a permanent record.

Further it would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal to dispense money in the form of returning change for a purchase if for no other reason than to prevent vandalism to the machine.

Bradt and Sokal however do not teach the use of backlighting.

Brandes et al. teach the use of a plate and backlighting on a vending machine. See the abstract and col. 4, lines 34-43.

It would have been obvious to one of ordinary skill in the art to modify Bradt and Sokal in view of Brandes and use backlighting and a plate on the front of the vending machine to promote use of the machine and allow the controls to be conveniently grouped.

21. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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22. Claim 130 is rejected under 35 U.S.C. 102(e) as being anticipated by Sokal et al. 5,953,504.

Sokal et al. teaches allowing public access to the Internet, use of a computer, payment means, use of removable memory means, display, key pad, camera, microphone, speaker, modem, attracting customers, server, display of a home page which requires the use of a browser, downloading information, sending receiving audio/video information, CD-ROM reading/mastering, display time to browse or price information, connecting to a business web site or other site. See the abstract; figures; col. 1, line 6 to col. 2, line 25; col. 3, line 8 to col. 5, line 23; col. 6, line 26 to col. 7, line 12; and the claims.

In response to applicant's arguments, claim 130 does not depend on either claim 114 or 127 and the declaration is ineffective to overcome the Sokal reference.

23. Claim 130 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Huegel 5,239,480.

Huegel teaches a vending machine and computer, audio/video advertising, use of a credit card, use of a modem and server to connect to remote sites. See the figures, col. 2, line 28 to col. 3, line 3; col. 5, line 1 to col. 6, line 64; col. 8, lines 39-44; col. 9, lines 34-54.

Huegel however does not specifically mention the terminology websites, but does teach remote access of computer sites.

These remote sites of Huegel are obviously if not inherently "websites " given the broad Internet definition set forth on page 4 of the instant specification in which the

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Internet term is said to refer to numerous computer databases and on-line services available for public access for retrieving and/or sending information. The remote sites of Huegel by this broad definition would be websites as appear to be defined by applicants.

24. Claim 130 is rejected under 35 U.S.C. 102(e) as being anticipated by Kolls 5,637,845.

Kolls teaches a vending machine for allowing Internet access. Kolls teaches the use of a computer, monitor, memory, speaker, card reader, keypad, modem, tracking use time, purchasing access time to the Internet, use of a credit card See col. 1, lines 23-28; col. 4, lines 27-34; col. 6, lines 10-34; col. 15, line 23 to col. 20, line 61; and the figures.

Further Kolls provides for purchasing time to access the Internet as noted in the above sections, vending copies, etc. Note figures 13 on and col. 17, lines 40-65 for example.

In response to applicant's arguments, the applicant has provide a broad definition on page 4 of the instant specification in regards to the Internet being online services, databases, etc. and which is met by Kolls.

25. Claim 130 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lockwood et al. Re. 32,115.

Lockwood et al. teaches a vending machine 23 and computer 30, use of coins or a credit card, accessing various remote information sources (col. 1, line 67 to col. 2, line 23). See the abstract; figures; col. 1, line 67 to col. 2, line 23; col. 3, lines 4-50; col.

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4, lines 50-55; col. 5, line 32 to col. 6, line 66; col. 7, line 16 to col. 8, line 49; and the claims. Note in particular claim 8.

Lockwood however does not specifically mention the terminology websites, but does teach remote access of computer sites.

These remote mass storage of Lockwood Huegel are obviously if not inherently "websites " given the broad Internet definition set forth on page 4 of the instant specification in which the Internet term is said to refer to numerous computer databases and on-line services available for public access for retrieving and/or sending information

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven R. Garland whose telephone number is 571-272-3741. The examiner can normally be reached on Monday-Thursday.

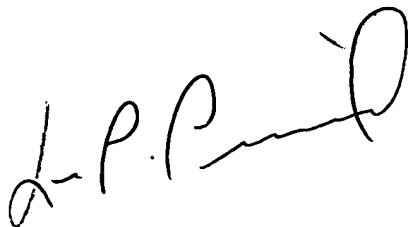
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571-272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Steven R Garland
Examiner
Art Unit 2125



LEO PICARD
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